## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA STATESVILLE DIVISION 5:20-cr-59-KDB-DCK-1

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
vs.	) ) )	ORDER
ANTHONY RICHARD RIVERS,	) )	
Defendant.	)	
	<i>)</i>	

**THIS MATTER** is before the Court on its own motion following the filing of the Government's Motion to Dismiss Defendant's Motion Under 28 U.S.C. § 2255 [Doc. 95].

The Court notifies Defendant that, in accordance with <u>Roseboro v. Garrison</u>, 528 F.2d 309 (4th Cir. 1975), Defendant has a right to respond to the Government's Motion to Dismiss.<sup>1</sup> The Court also advises Defendant that failure to file a timely and persuasive response may result in dismissal of the § 2255 Motion to Vacate.

IT IS, THEREFORE, ORDERED that Defendant shall respond to the pending Motion to Dismiss [Doc. 95] no later than **twenty-one** (21) **days** from entry of this Order. Failure to file a timely and persuasive response will likely lead to the dismissal of this action.

against them."), *abrogated on other grounds by* Wilkins v. Gaddy, 559 U.S. 34 (2010). Nevertheless, courts routinely issue Roseboro notices for motions to dismiss, and the Court does so here.

<sup>&</sup>lt;sup>1</sup> The Fourth Circuit did not hold in <u>Roseboro</u> that such notice is required for motions to dismiss. Rather, the Fourth Circuit's discussion in <u>Roseboro</u> regarding notice was directed to summary judgment motions. <u>See Roseboro</u>, 528 F.2d at 310 ("We agree with the plaintiff, however, that there is another side to the coin which requires that the plaintiff be advised of his right to file counter affidavits or other responsive material and alerted to the fact that his failure to so respond might result in the entry of summary judgment against him."); <u>see also Norman v. Taylor</u>, 25 F.3d 1259, 1261 (4<sup>th</sup> Cir. 1994) ("In <u>Roseboro</u>[], this circuit held that pro se plaintiffs must be advised that their failure to file responsive material when a defendant moves for summary judgment may well result in entry of summary judgment

## IT IS SO ORDERED.

Signed: April 12, 2024

Kenneth D. Bell

United States District Judge